

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 926 - HB 1391**

April 22, 2021

**SUMMARY OF BILL:** Grants state employees paid leave equal to 12 workweeks during a 12-month period, if the following criteria is applicable:

- Because of birth, adoption, or placement through foster care, is caring for a new minor child during the first year after the birth, adoption, or placement; or
- Is caring for a family member with a serious health condition;

Establishes that 12 weeks is the maximum time during which family and medical leave insurance benefits are payable in an application year.

The Department of Labor and Workforce Development (DLWD) will be the administrator of this program and may promulgate rules to effectuate the provisions of this Act.

During any leave taken pursuant to this act, the employer is required to maintain healthcare benefits the covered individual had prior to taking such leave, as if the individual has remained in employment.

For purposes of promulgating rules, this act takes effect upon becoming law. For all other purposes, this Act shall take effect July 1, 2021.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$15,641,600/FY21-22 and Subsequent Years**

Assumptions:

- This act specifies that the maximum amount of weeks that the TN family and medical leave insurance benefits are payable in an application year is 12 weeks.
- According to the U.S. Department of Labor, 60 percent of all employees meet all criteria for coverage and eligibility under FMLA. Further, 13 percent of all employees reported taking leave for an FMLA qualifying reason in the previous 12 months. <https://www.dol.gov/whd/fmla/survey/>.
- Based on information provided by the Department of Human Resources (DHR), approximately 3,360 employees within executive branch agencies took some form of FMLA leave in FY18-19.

- Approximately 263 employees within the non-executive branch took some form of FMLA leave in FY18-19.

*Overall Liability to the State:*

- The Family and Medical Leave Act in 2012: Final Report with data last revised April, 2014 indicates that approximately 75 percent of current employees have an unmet need for leave and of those approximately 46.1 percent could not afford to go on unpaid leave.*
- It is assumed current employees who currently cannot afford to take FMLA due to unpaid leave or do not have accumulated leave for the full 12 weeks will be able to take leave as a result of the proposed legislation; therefore, there will be an increase in FMLA leave taken by employees.

| Branch        | Average Salary | FMLA FY2019 | Increase FMLA due to Paid Leave | Total FMLA Employees | Total for 12 weeks Paid Leave |
|---------------|----------------|-------------|---------------------------------|----------------------|-------------------------------|
| Executive     | \$ 76,233      | 3,360       | 7,500                           | 10,860               | \$ 191,051,626                |
| Non-Executive | \$ 111,714     | 263         | 1,081                           | 1,344                | \$ 34,648,527                 |
| Totals        |                | 3,623       | 8,581                           | 12,204               | \$ 225,700,153                |

- Based on information from DHR, approximately 70 percent of FMLA leave is taken as leave with pay by using annual, sick and compensatory leave. The provisions of the bill will result in leave days being used at a later time or accumulating throughout the employee's tenure.
- Any accumulated annual or compensatory time leave at the time of an employee's termination from state government is paid out based on the employee's hourly rate at the time. While this will not result in a direct annual fiscal impact, it does create a fiscal liability for the state.
- For the leave taken in FY18-19, it is assumed this will result in approximately \$12,594,331 in additional liability each year  $\{[(3,360 \times (\$76,233/365) \times 23 \text{ days}) + (263 \times (\$111,714/365) \times 23 \text{ days})] \times 70\%\}$ .
- Based on information collected regarding accumulated leave by state employees, approximately 40 percent of all accumulated leave is annual or compensatory time. It is estimated the 8,581 employees who take FMLA as a result of the proposed legislation will accumulate approximately 24 days of leave (60 days FMLA x 40%) resulting in additional state liabilities of \$45,534,926  $[(7,500 \times (\$76,233/365) \times 24 \text{ days}) + (1,081 \times (\$111,714/365) \times 24 \text{ days})]$ .
- The total state liability for unused leave is estimated to be \$58,129,257  $(\$12,594,331 + \$45,534,926)$ .
- This amount will continue to grow as people are able to use paid FMLA leave rather than accumulated annual, sick, or compensatory time leave.

- Based on information provided by the Department of Finance and Administration, the state experiences payroll savings on average of \$265,409,165 annually for these departments and agencies.

| Fiscal Year   | Payroll Savings  |                        |
|---------------|------------------|------------------------|
|               | Executive Branch | Non-Executive Branches |
| FY2014 - 2015 | \$ 222,421,504   | \$ 24,400,933          |
| FY2015 - 2016 | \$ 232,773,484   | \$ 28,254,081          |
| FY2016 - 2017 | \$ 263,997,442   | \$ 28,883,235          |
| FY2017 - 2018 | \$ 242,403,131   | \$ 27,553,477          |
| FY2018 - 2019 | \$ 230,254,304   | \$ 26,104,232          |
| Average       | \$ 238,369,973   | \$ 27,039,192          |

*Annual Savings Unrealized:*

- Annual savings realized within executive branch agencies for employees going on leave without pay for FMLA events is estimated to be two percent of all payroll savings, or approximately \$4,767,399 ( $\$238,369,973 \times 2.0\%$ ).
- Similarly, annual savings realized within the court and constitutional officer departments for employees going on leave without pay for FMLA events is estimated to be 4.5 percent of all payroll savings, or approximately \$1,216,764 ( $\$27,039,192 \times 4.5\%$ ).
- For purposes of this analysis, it is estimated total annual savings that will no longer be realized and will no longer be available for future expenditures will exceed \$5,984,163 ( $\$4,767,400 + \$1,216,764$ ) in recurring state expenditures.

*Additional Expenditures:*

- Based on information provided by the DHR, approximately six percent of FMLA leave employees result in hiring temporary employees or overtime being paid to current employees and each FMLA leave employee takes on average 23 days.
- With the proposed legislation resulting in an increase in employees taking FMLA and also the amount of time each employee will take, it is estimated temporary employee days and overtime pay will increase.
- Further, due to current employees no longer having to use accumulated annual, sick, or compensatory time leave to meet FMLA leave needs, it is reasonable to assume an overall increase in temporary and overtime employee days of approximately 10 percent. The total increase in temporary and overtime employee day expenditures is estimated to be \$9,657,453.

| Branch        | Current<br>Temporary and<br>Overtime<br>Employee Days | Increased<br>Temporary and<br>Overtime<br>Employee days | Average<br>Daily Rate | Total Cost for<br>Temporary<br>Employees |
|---------------|---|---|-----------------------|--|
| Executive     | 4,637   | 52,459  | \$ 141                | \$ 7,373,141                             |
| Non-Executive | 363   | 9,825   | \$ 233                | \$ 2,284,313                             |
| Totals        | 5,000   | 62,284  | \$ 373                | \$ 9,657,453                             |

- The total recurring increase in state expenditures for is estimated to exceed \$15,641,616 (\$5,984,163+ \$9,657,453).

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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